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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/520,759	01/11/2005	Jan Hall	21547-00303-US1	2805
30678 7590 10/31/2007 CONNOLLY BOVE LODGE & HUTZ LLP 1875 EYE STREET, N.W. SUITE 1100 WASHINGTON, DC 20036			EXAMINER BUMGARNER, MELBA N	
			ART UNIT 3732	PAPER NUMBER
			MAIL DATE 10/31/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/520,759

Applicant(s)

HALL, JAN

Examiner

Melba Bumgarner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 18-34 is/are pending in the application.
- 4a) Of the above claim(s) 31-34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/11/05</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election without traverse of Invention II, new claims 18-30, cancelled claims 10-17, in the reply filed on August 27, 2007 is acknowledged.
2. New claims 31-34, cancelled claims 1-9, are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

### *Claim Objections*

3. Claim 18 is objected to because of the following informalities: it is unclear what is meant by "space is defined *between* said outer surface, said inner surface and the recipient's bone". Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 18-27, 29 and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Albrektsson et al. (5,702,473). Albrektsson et al. disclose an implant 1 comprising an outer surface having a first cross-section diameter, capable of being configured to approximately equal bone hole, an inner surface having a second cross-section diameter configured to be smaller than the first diameter, a space defined between the outer surface and inner surface, and growth stimulating substance (column 4 line 2) retained on the implant. The outer surface is configured

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as outer crest portions of a screw thread and the inner surface configured as inner portions of a screw thread (column 2 line 28), and the screw thread extends along a majority of the circumference of the implant. Patentable weight is not given to the intended use of the implant in a bone; however, the implant is capable of use in cooperating with the formed bone hole as claimed, being implanted by pressing force (column 1 line 66), and use in a procedure with CT-scan measurement. The implant comprises a recess 8, wherein the GSS is disposed within the recess. The recess is configured to be at least part longitudinally along and at least part circumferentially around the implant. The implant comprises a porous oxide layer disposed on the implant (column 2 line 49), as it is known that blasting with titanium or aluminum oxide forms a porous surface and thin oxide layer.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Albrektsson et al. in view of Caplan et al. (4,620,327). Albrektsson et al. disclose an implant that shows the limitations as described above; however, they do not show the GSS adapted and provided in gel form. Caplan et al. teach a GSS in gel form (column 3 line 31). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the implant of Albrektsson et al. by providing the GSS of Caplan et al. for improved bone formation in view of Caplan et al.

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*Conclusion*

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melba Bumgarner whose telephone number is 571-272-4709. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached at 571-272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Melba Bumgarner  
Primary Examiner